STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Vicki Lou Alden, Appellant, **v.** **Jackson County Board of Review,** Appellee.	**ORDER** **Docket No. 13-49-0281** **Parcel No. 121023200008000**

On May 23, 2014, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. Attorney Nicholas C. Thompson, Dubuque, Iowa represented the Appellant Vicki Lou Alden and participated by phone. Attorney Brett Ryan, Watson & Ryan, PLC, Council Bluffs, Iowa represented the Jackson County Board of Review. The Appeal Board, having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Vicki Lou Alden is the owner of residential property located at 14945 182nd Avenue, Maquoketa, Iowa. Alden's property is a one-and-a-half-story, frame home built in 1978. It has 2930 total square feet of living area and a 1210 square-foot unfinished basement. There is also an 800 square-foot, detached garage built in 1980; a 686 square-foot wrap around deck; a gazebo; and a 180 square-foot shed. The site is 15.45 acres. The January 1, 2013, assessed value was $247,600, allocated as $66,100 in land value and $181,500 in dwelling value.

Alden protested to the Board of Review claiming an error in the assessment under Iowa Code section 441.37(1)(a)(4). Her error claim essentially asserts the property is misclassified under Iowa

Code section 441.37(1)(a)(3). Alden believes the correct classification is agricultural. The Board of Review denied the petition. She then appealed to this Board reasserting her claim.

Alden's property is one assessment parcel, which consists of two previously separate but adjoining sites. Alden owned a residential dwelling on 2.87 acres. She then purchased an adjoining site in 2009 for $52,000. Aden's adjoining site, which she describes as pastureland, was roughly 12.5 acres of a nearly 40-acre tract. Another individual purchased the remainder of the tract, which was cropland. The tract was part of a larger farming operation owned by Cornell College.

Alden explained that after she received her 2013 assessment she met with the Deputy Assessor, who explained the two sites were combined into a single assessment parcel and classified residential. Later, Alden spoke with County Assessor Deb Lane regarding the assessment. Alden asserts Lane told her she believed the property was properly classified residential and further, that Lane did not believe Alden made enough profit on the land for it to be classified agricultural. This Board asked Alden if the Assessor's Office consulted with her on combining the sites for assessment purposes, and she testified she was unaware of it until she received her assessment notice. Lane testified she combined the two sites into a single assessment parcel because, in her judgment, there was no agricultural use occurring on either site. Further, Lane did not see any agricultural use on the property because of its topography, slope, and heavy tree growth. Ultimately, in Alden's recollection, Lane explained it was out of her hands and had to be protested to the Board of Review.

At hearing before the Board of Review, Alden asserts she was told, "There was clearly a mistake," and her property's classification would be returned to agricultural. However, the Board of Review's decision letter denied her petition. The record also contains a letter from Board of Review Chair Kevin Brown to the Assessor explaining the Board of Review's decision to retain the agricultural classification. Brown's letter essentially explains the Board of Review's opinion was based on a lack of good faith and intent to profit.

Alden explained the 12.5-acre parcel is fenced, but there is no access gate to it from her homestead site. There is, however, a gate on the east side of the site and on the highway. We do not find the fact that a fence separates the homestead from the remainder of the site has any bearing on the classification. She also stated that, to her knowledge, the site had always been used as pasture, primarily for cattle, but also horses at some point. Because Alden's site was previously part of a larger parcel that included cropland, it is reasonable to infer that this area was identified as "pasture" for assessment purposes, but does not necessarily mean it was used for livestock.

Alden asserts she purchased the site as an investment that will increase in value, and she did not want the property improved. She also asserted she purchased it with intent to profit from renting the pasture. Alden described the pasture's topography as mostly grassland to the south and rough and rocky land that cannot be cropped to the north (near the highway). Lane confirmed the part of the site has quite a bit of rocky area, and cedar trees are predominant on the site. Lane further notes the site is rolling with some heavier slopes and agrees it is not conducive to being row-cropped.

Alden stated she currently rents the pasture, by oral agreement, to a neighbor, Mike Baker, who pays $600 per year. Baker, who has a cow-calf operation, testified he has rented the property from Alden since she purchased it. His parcel adjoins Alden's site on the east side. He stated the site has been pasture for as long as he can remember. Baker explained he has approximately 140-acres of cropland, and about 150- to 160-acres of pasture, in addition to Alden's pasture, for his 70-pair cow-calf operation. He explained there is no water available on the Alden property, and he provides maintenance of the pasture. For these reasons, he does not pay as much rent to Alden as he might on other pastureland. He indicates there are between 12-18 head of cattle that graze between his property and Alden's pasture but because there is no water source, the cattle cannot be contained on Alden's property. Therefore, he could not state with certainty the number of days or months there are actually

cattle on Alden's property. He indicated the cattle might be on the Alden property anytime from roughly the end of May to about October depending on grass conditions and weather.

Alden also submitted a Schedule E for the 2012 and 2013 tax years. (Exhibits 3 & 4). The 2012 Schedule E shows a $400 profit from rents received. However, the 2013 Schedule E shows revenue of $600 from rents received and $1526 in legal and other professional fees for a total loss of $926. We note she did not deduct any taxes or interest from her mortgage payments. If these items had been expensed it is unlikely Alden would demonstrate a profit on the Schedule E. Ultimately, we do not find the Schedule E documents relevant in determining the classification of the property and we give them no consideration.

Lane explained that when Alden purchased the property, pasture ground in the county was selling for about $3000 to $3100 an acre, whereas Alden paid closer to $4000 per acre. Lane stated she obtained information about the value of pastureland from an individual who provides spreadsheets on sales of agricultural land based on the corn suitability rating (CSR's).

Lane further testified that because of the topography, heavy tree growth, and slope, she did not see any agricultural use on the property. Lane stated she had driven by the subject property on several occasions and has never seen any cattle on the site. However, she characterized the subject parcel as below-average pasture ground and admitted that because the site is heavily wooded, it is unlikely she would have seen cattle on the property from the road. Ultimately, because of the topography and heavy trees, along with the site adjoining Alden's residential homestead, and because Alden told Lane said she purchased the property to control building on it, Lane classified the property residential.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply.

Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id*. The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id*. However, agriculturally classified property is valued based solely on productivity and net earning capacity. § 441.21(1)(e).

Alden asserts the property is misclassified and that its actual classification should be agricultural. The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* IOWA ADMIN. CODE r. 701-71.1 et al. (2011). Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. r. 701-71.1(1). Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. r. 701-71.1(2). Property is to be classified "according to its present use and not according to any highest and best use." r. 701-71.1(1). "Under administrative regulations adopted by the . . . Department . . . the determination of whether a particular property is 'agricultural' or [residential] is to be decided on the bases of its primary use." *Svede v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa l989). There can be only one classification per property. r. 701-71.1(1).

By administrative rule, agricultural property

> shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit.
> . . .

r. 701-71.1(3)(emphasis added).

Conversely, residential property

> shall include all lands and buildings which are primarily used or intended for human habitation, including those buildings located on agricultural land. Buildings used primarily or intended for human habitation shall include the dwelling as well as structures and improvements used primarily as a part of, or in conjunction with, the dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds for household goods.

r. 701-71.1(4).

To determine if the property's correct classification, we must begin with the overarching principle that property is to be classified based on its *present use* and not its highest and best use. r. 701-71.1(3).

Alden owns two sites, which have been combined into a single assessment parcel. The "homestead site" is roughly 2.87 acres in size and is improved with a dwelling. In 2009, Alden purchased roughly 12.5 acres adjoining her homestead. The 12.5-acre parcel was split off of a larger tract that was part of an even larger farming operation. The majority of the larger site was cropland, which a different buyer purchased. The remaining portion of the site, which Alden purchased, was not able to be cropped because of its topography and heavy timber. While Alden asserts the site has "always been pasture" there is no additional evidence in the record demonstrating the site has historically been used to pasture livestock. The Board of Review asserted that Alden's motivations to purchase the site, in addition to the topography and heavy timber, resulted in the decision to combine

the two sites into a single assessment parcel and classify the property residential. *See* § 428.7 (permitting combining descriptions for assessment purposes to allow the assessor to value the property as a unit).

Alden testified she has been renting the site for pasture use since she purchased the property. Her tenant testified he has approximately 12-18 head of cattle that graze on his property and at times on Alden's property. However, because Alden's property does not have a water source, the cattle are never contained on her site. Because the cattle are free to graze between the two pastures, there is no clear period the cattle are actually on Alden's site, and the site offers minimal utility for pasturing livestock due to its topography and lack of water, we find that any agricultural use occurring on the site to be incidental.

Further, we question that the use as pasture is being done in good faith. We note that although "good faith" is not defined by the rule, the Iowa Courts have interpreted "good faith" to mean "honesty of intention" or "subjective honest belief." *Haberer v. Woodbury County*, 560 N.W.2d 571, 575 (Iowa 1997); *Garvis v. Scholten*, 492 N.W.2d 402, 404 (Iowa 1992). While there is an agreement between Alden and the tenant to allow cattle to graze on the site, any cattle that may actually wander onto the property seems to be incidental. The topography of the site, which is undisputed by both parties, indicates the land is "poor pasture" area at best.

As we have already noted, we do not find the property is used primarily in good faith for an agricultural purpose and we therefore conclude the residential classification should be retained. As a result, we do not reach the final issue of whether there is an intent to profit from an agricultural activity. r. 701-71.1(3).

However, we note the heavily timbered site may qualify for an exemption under Iowa Code Chapter 427C as a forest or fruit tree reservation and suggest Alden review the requirements for an exemption under that Chapter.

THE APPEAL BOARD ORDERS the 2013 assessment and classification of Alden's property located at 14945 182nd Avenue, Maquoketa, Iowa, set by the Jackson County Board of Review, is affirmed.

Dated this 2nd day of July 2014.

Karen Oberman, Presiding Officer

Stewart Iverson, Board Chair

Jacqueline Rypma, Board Member

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